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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1530)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody. Welcome to meeting 121 of the Standing Committee on Industry, Science and Technology as we continue our study on the legislative review of the Copyright Act.

Today we have with us, from the International Alliance of Theatrical Stage Employees, John Lewis, International Vice-President and Director of Canadian Affairs. We have, from Artisti, Annie Morin, General Manager, and Sophie Prégent, Vice-President. From the Directors Guild of Canada, we have Tim Southam, President, National Office, and Dave Forget, Director of Policy, National Office.

We thought that our time was limited because of the votes in the House, but we're not, so you'll each have up to seven minutes for your presentation. Then we'll go into questions. We're going to start with Mr. Lewis.

You have have up to seven minutes.

Mr. John Lewis (International Vice-President and Director of Canadian Affairs, International Alliance of Theatrical Stage Employees): Thank you, and I appreciate this opportunity to speak with you this afternoon.

The IATSE is one of the oldest and largest trade unions representing workers in Canada's entertainment industry. We were formed in 1893 and presently represent 22,000 workers in Canada and 140,000 in North America. We are the technicians and artists who work on big-budget foreign productions such as *Star Trek: Discovery* in Toronto and *Deadpool* in Vancouver, but we also work on Canadian productions like *Cardinal* in Sudbury, and *Maudie*, which was shot in Newfoundland.

I am certain many witnesses who will be appearing before you will speak to the importance of the cultural industries establishing and nurturing our national identity and how a modern copyright legislative regime promotes creativity and innovation.

I am here, however, to talk about jobs. Effective copyright legislation is a vitally important tool to protect the economic interests of Canadian consumers, creators, producers, broadcasters, and workers. Canadian film and television production is now an $8 billion industry that creates 171,000 full-time equivalent jobs. Digital theft has a direct impact on our industry.

For our members, there is no job security. We are the workers behind the camera—the grips and hair stylists, the set decorators and camera operators—who depend on a healthy industry for their employment. IATSE members receive no residual payments once a production has wrapped. Their incomes depend solely on what is shooting each day, because once your show wraps, so does your paycheque.

Why is strong copyright protection important to the IA? Because when producers—who are our employers—are hit with financial losses due to piracy, there is less money in the pot for future projects and therefore fewer job opportunities for our members. Piracy is not a victimless crime.

Streaming services have overtaken peer-to-peer platforms like BitTorrent and now account for up to 85% of all piracy. In 2016, there were 1.88 billion visits to piracy sites by Canadians. An estimated 375 million pirated movies and TV shows were downloaded using BitTorrent in Canada in 2016 alone.

The latest method for viewing illegal content is the fully-loaded media player. The most popular of these is the Kodi set-top box. These players come preloaded with applications that provide users with access to licensed content, but there are add-ons available that allow users to access unlicensed content. Almost one in 10 Canadian homes now has a Kodi box. Of these, 70.9% are using a piracy add-on.

Here is a specific example of the impact of piracy. *Letterkenny* is the second-most pirated TV show in Canada. The show is one of thousands available to watch legally through a subscription to CraveTV at a nominal cost of $7.99 a month. It has been downloaded illegally more than one million times. Estimates are that these downloads have resulted in up to 350,000 fewer subscriptions to CraveTV, which has a monthly value of up to $2.8 million.

In 2012 the Copyright Modernization Act was passed with its mandated review of the legislation every five years. There have been some positive outcomes from its implementation. For example, the Federal Court of Appeal affirmed a trial court interlocutory injunction in March of 2017 against retailers of set-top boxes such as the Kodi box. Another example is the 2015 injunction obtained by the Motion Picture Association of America against the Canadian programmers of Popcorn Time, a website that allowed for the dissemination of free online content.

There are still many areas in which the current legislation falls short. The rapidly evolving digital landscape has highlighted serious weaknesses with the current act. On January 2, 2015, the notice and notice system came into force, which was intended to be an educational tool for end-users. Education is good, but there is no evidence that the notice and notice has contributed to any significant change in consumer behaviour. There are no consequences for the consumer and no substantive incentives for internet service providers to purge their services of illegal material. There are also insufficient incentives for ISPs to respect the notice and notice system, because any failure on their part to forward notices from rights holders has no impact on their exposure to copyright infringement liability.

● (1535)

Governments worldwide are coming to the realization that there must be regulation for online platforms. Considerable attention has been placed recently on privacy concerns with respect to online platforms, both in the United States and Canada, but there has also been discussion and legislative action aimed at regulating responsible behaviour on the Internet and placing obligations on online platforms. The Internet is no longer the Wild West. Governments are coming to realize that regulation and greater oversight are necessary.

There is no single solution that will solve this many-faceted issue, but the IA offers one for your consideration. We are one of the 25 organizations behind FairPlay Canada, which includes unions, broadcasters, production companies, and other stakeholders.

FairPlay Canada has filed an application with the CRTC to help protect content creators. We propose a system similar to one used in countries like the U.K., Australia, and France, which would empower the CRTC to identify and remove the ability of illegal piracy websites to reach Canadians. Under our proposal, the CRTC would create an independent, not-for-profit organization called the independent piracy review agency, or IPRA, which would make recommendations to the CRTC on which sites should be blocked.

Any interested parties could make an application regarding a site, and the application would be served on the website and the ISPs. IPRA would then make a recommendation to the CRTC on whether to add the site to the list of blatant piracy sites. It would only recommend adding a website to the list if the evidence presented established that it was blatantly, overwhelmingly, or structurally engaged in piracy. The CRTC would be responsible for making the final determination. The CRTC decision would also be subject to oversight by the Federal Court of Appeal. Once a site was on the list, the ISPs would be required to block any Canadian user from accessing that site, which could be located anywhere around the world.

I want to make clear that this proposal in no way infringes on net neutrality. Both the IA and FairPlay support open access to all legal content on the Internet. However, net neutrality protects only the flow of legal content and is not impacted by this proposal. Again, we're talking exclusively about blatant piracy sites, not sites where piracy might exist. We mean a site like The Pirate Bay, which exists primarily to share copyrighted materials, and not, for example, YouTube, where the majority of content is original and posted by the creator.

It is time for Canada to look at more innovative solutions to piracy. The creative industries need support to ensure that the livelihoods of tens of thousands of talented Canadians are protected.

Thank you.

● (1540)

The Chair: Thank you very much. May I say that you had me at *Star Trek*.

We're going to move Artisti.

[*Translation*]

You have seven minutes.

Ms. Sophie Prégent (Vice-President, Artisti): Thank you.

Ladies and gentlemen, first I will say a few words about Artisti.

Artisti is a collective management society created by the Union des artistes in 1997 to administer the copyrights of performers. Since its inception, Artisti has distributed more than $43 million to its 4,500 members.

We are proposing the following six recommendations to make the Copyright Act fairer and more in tune with reality.

Mrs. Annie Morin (General Manager, Artisti): First, we recommend that the private copying regime also be extended to the digital audio devices that make the copying of music possible, not just to blank CDs, as is the case today.

Creators should be paid royalties for the use of their work, regardless of the medium used.

Second, we recommend limiting the free exceptions and reinstating subsection 30.9(6) of the Copyright Act, which was repealed in 2012. Removing that subsection contributed to significantly reducing the tariffs paid by radio to performers.

The exceptions in place do not meet the requirements of the three-step test imposed by international treaties. Artisti is asking the legislator to correct this situation.

Ms. Sophie Prégent: Our third recommendation is to treat performances incorporated into music videos as musical performances, not as cinematographic performances.

Currently, once a performer authorizes the incorporation of their performance into a cinematographic work, including a video, they give up their copyright.

For example, a performer whose performance is captured on video and is also audio-recorded may only exercise copyright or receive equitable remuneration when their sound performance is dissociated from the video. Yet a music video is a song with images. I don't know anyone who watches a YouTube music video of a song on mute. That person is "watching" the song.

In such a case, depriving the artist of their rights is absurd. The international community recognized this in 2012, when it adopted the Beijing Treaty on Audiovisual Performances.

It is therefore imperative that Canada ratify that treaty and extend the exclusive and moral rights for performers in the sound recording industry to all performers.

However—and this is our fourth request—the definition of "sound recording" must also be changed so that songs used in movies or TV shows are also covered by equitable remuneration.

The definition of "sound recording" is problematic since it excludes soundtracks of cinematographic works broadcast at the same time as the film. In addition to being discriminatory, this deprives performers of significant revenues, since authors enjoy equivalent royalties in similar circumstances.

Fifth, it is necessary to find ways to compensate performers for the use of their performances on the Internet.

Quebec artists are well aware that the revenues from the streaming of their works are ridiculously low, even for their most popular songs.

First, revenues for non-interactive and semi-interactive webcasting are generated from a tariff set by the Copyright Board of Canada. The rate is almost 11 times lower than the one in effect in the United States.

Second, revenues for on-demand webcasts, such as Spotify or Apple Music, for example, are subject to contracts between artists and producers requiring the recovery of production costs before royalties are paid to the artists. Given the small sums generated by album sales and on-demand webcasting, performers are too often deprived of royalties from this commercial exploitation.

● (1545)

Mrs. Annie Morin: Our recommendation has two components.

First, guidelines should be incorporated into the act so that the tariffs of the Copyright Board of Canada align with those that apply to our neighbours to the south. Streaming should have the same value, whether in Canada or the United States. Guidelines should also be provided for the Copyright Board of Canada to respect agreements between users and collectives.

Second, it is necessary to introduce a right to remuneration for the digital use of performances such as the one advocated by the European group, Fair Internet for Performers. In addition, that tariff should be subject to mandatory collective management. Better still, equitable remuneration, which is paid half to the performers and half to the producers of sound recordings, should also apply to webcasting on demand, as is the case for radio.

Finally, our last recommendation is very simple: abolish the exemption that allows broadcasters to evade the obligation of paying fair compensation royalties on the first $1.25 million of their annual advertising revenues. Adopted in 1997, this exemption does not apply to authors and was intended to be transitional. Twenty years later, the abolition of this discriminatory measure is urgent.

Ms. Sophie Prégent: I will conclude by asking a question: why do we find it so hard to recognize the value of the performer when talking about music?

Current practices do not adequately recognize the performer's contribution and risk taking. Artists spend hundreds, if not thousands, of hours developing their talent. Their contribution must be fully recognized.

Our laws must support artists who have to deal with the cultural industry giants, because, as I often say and repeat: there is no culture without the artist.

Thank you.

The Chair: Thank you very much.

[*English*]

We're going to move to Mr. Southam.

You have up to seven minutes.

Mr. Tim Southam (President, National Office, Directors Guild of Canada): Thank you, Chair, vice-chairs, members of the committee.

My name is Tim Southam. I'm the President of the Directors Guild of Canada and a director of feature films, documentaries and series on platforms ranging from theatrical release to linear television and the Internet.

I recognize your love of *Star Trek*, but I have to put in a pitch for *Lost in Space*, which I directed this year.

The Chair: That works too.

Mr. Tim Southam: Okay, good.

With me is Dave Forget, Director of Policy.

We appreciate the committee's invitation to present the DGC's work with the Directors Rights Collective of Canada, particularly as this work reflects a core principle of the DGC, which is that Canadian directors and screenwriters should be recognized in law as co-authors of the audiovisual work.

[*Translation*]

The DGC is a national labour organization representing key creative and logistical professionals in the film, television and digital media industries. Today, we have approximately 5,000 members covering all areas of direction, production, editing and visual design.

In 1998, the Directors Guild of Canada founded the Directors Rights Collective of Canada (DRCC), a collecting society that administers foreign royalty payments from copyright legislation in other jurisdictions and distributes those earnings to all Canadian directors, from all genres. In 2017, the DRCC paid out $796,000 in foreign royalties to its membership of 1,349 Canadian directors.

[*English*]

Directors are entitled to these royalties under national copyright legislation and monetization systems outside of Canada, primarily in Europe, but increasingly elsewhere where copyright laws identify audiovisual directors as the authors of their work and require payments in much the same way as SOCAN requires payments for composers and songwriters in Canada.

Here in Canada, while the current Copyright Act leaves the authorial status of so-called cinematographic work ambiguous, both the text and subsequent legal rulings give overwhelming support to the proposition that the screenwriter and the director are co-authors of the work.

Section 11.1 of the act distinguishes between audiovisual content with "dramatic character" and content without dramatic character, giving a normal term of copyright, which is the life of the author plus 50 years, only to those works where "the arrangement or acting form or the combination of incidents represented give the work a dramatic character".

A writer, of course, creates a "combination of incidents" known as a plot or a script. A director then directs the acting and conceives and arranges all of the various creative elements that will ultimately appear on screen, creating the staging, camera frames, camera movements, conceiving the settings and selecting locations, determining the tone and interaction of performers, arranging the final sequence of images in the edit and determining the sound design and musical score.

Section 11.1, for all intents and purposes, gives a job description for screenwriters and directors. If authorship in audiovisual media means creating an original work and giving it dramatic character, as the act defines it, then it only stands to reason that the author is the originator and creator who provides that dramatic character.

● (1550)

Mr. Dave Forget (Director of Policy, National Office, Directors Guild of Canada): The term of the copyright itself, set as the life of the author plus 50 years, constitutes further evidence that the author must be an individual and a physical person, someone who can be credited with authorship and natural ownership of moral rights, not a corporation or other legal entity. This interpretation of the act is supported by all existing Canadian case law and Quebec jurisprudence under the Civil Code.

The act also explicitly distinguishes between the author and the maker of a work. While the maker designation is mostly used in relation to sound recordings, it is also defined for audiovisual works, and nowhere in the act is first ownership of copyright or moral rights ever assigned to the maker of an audiovisual work. This further establishes that ownership of copyright and moral rights must belong solely to the originating author and that the author must be a physical person giving the work its original dramatic character.

This is not only the existing interpretation of the courts, but it is effectively already the policy embedded in the agreements and contracts in our industry. Businesses require certainty, and no producer, studio, broadcaster or distributor would ever invest in a project without knowing they had secured the rights necessary to exploit it. This is why screenwriters and directors already routinely sign over their exploitation and moral rights and are already compensated with fees for their talent and for future use of their creation.

The change we're advocating today would cause no disruption to the status quo in our industry, no change to the way business is typically done, but it would acknowledge our moral rights as individuals and creators and make clear for the discussion of any future platform that those rights must continue to be respected.

Members of the committee, I thank you for your time.

We'd be pleased to answer your questions.

The Chair: Thank you very much. We're going to jump right into questions.

Mr. Longfield, you have seven minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Chair.

Thanks to everybody for not only giving us concise presentations, but also giving us some clear recommendations at the end. That's really helpful as we go forward.

Maybe I could start with Mr. Lewis. Talking about the revenue streams, when you were speaking I was thinking of Napster and how some of the pirating sites that were originally set up on the Internet were could be shut down. I wasn't involved with copyright at that part of the process. Do you see something similar in terms of identification of pirating sites? Are they as identifiable as Napster was?

Mr. John Lewis: Yes, the industry knows them. In many countries, they've already identified those sites and they have been shut down.

Canada is falling behind. I'm sure you're going to hear this from a number of witnesses in terms of copyright. We're not leading the charge, that's for sure.

What we're looking to do with the FairPlay application is really just to match what a lot of our western European countries are doing, where the cultural industries are vibrant and they saw a need to protect them. We looked at notice and notice, and, quite frankly, it was ineffectual, so we need some teeth.

The industry knows who the players are and this is a quick, efficient, and not costly way of addressing it, because some of the other initiatives that have been looked at.... For a copyright holder to try to enforce their rights, it's time-consuming and lengthy. This is a process that we think would allow for due process but get a quick result.

● (1555)

Mr. Lloyd Longfield: Thank you.

You mentioned the international reviews. Do international businesses in this area know of sites? Is there a report that we could see? Is there something that's being generated by the international arts community that would help?

I see the report, "The Value Gap", that was mentioned in our last testimony. I've gone through that report. It's a made-in-Canada approach. It references international studies. Do you have any international studies that you could provide to us?

Mr. John Lewis: We will provide them. We'll figure out how to do that properly through the committee but we will provide them, yes.

Mr. Lloyd Longfield: Terrific. Thank you very much.

Ms. Morin and Ms. Prégent, you were telling us about the focus on creators, which seems to me to be the starting point of all this, namely, to make sure that the creators are covered. It obviously isn't working right now.

Is the union or the collective approach...? Has there been a focus on creators that we need to know about that you could inform us about?

I'm fishing right now.

[*Translation*]

Mrs. Annie Morin: Actually, as a collective, we try as much as possible to ensure that the royalties collected for the use of performers' work do not decrease over time. Unfortunately, many exceptions were introduced in the Copyright Act when it was modernized in 2012, and that certainly makes things difficult. We are seeing a significant drop in royalties.

I was talking about private copying, for example. At the height of private copying, the royalties were over 50% of the Canadian royalties Artisti could distribute to artists. Last year, only 7% of Canada's royalties came from private copying.

We see that the act has not kept pace and that it would be appropriate to modernize it further so that it can be extended to devices.

I could talk about a lot of other exceptions that have been introduced in the act.

Unfortunately, this unfavourably draws the attention of foreign countries to Canada. As recently as May 2017, the Association littéraire et artistique internationale (ALAI) made a recommendation or expressed a desire to the Canadian government to limit free exceptions. In fact, if exceptions are introduced in the act, they should at least come with compensation.

[*English*]

Mr. Lloyd Longfield: Thank you.

I'm watching the time and I wanted to ask you about the Beijing treaty. It's been mentioned a few times now to us. I haven't looked it up, but is the Beijing treaty something that we should be using as a basis? Has it worked in other countries?

[*Translation*]

Mrs. Annie Morin: So far, the treaty has been ratified by 18 countries only, I believe. Yes, 30 countries must ratify it for it to be fully in force. It is a treaty that grants all exclusive rights to performers in the audiovisual sector, including moral rights, which is important.

[*English*]

Mr. Lloyd Longfield: Thank you very much. You guys are doing great.

Mr. Forget and Mr. Southam, if we look at the review of the CRTC that was just announced this week, how much of what you're discussing would apply to that review, and how much of it is something that needs to be looked at in terms of the Copyright Act itself? Would some of what you're talking about be covered by the CRTC review? If so, could you separate that out for us a bit? I know it's a brand new announcement.

Mr. Tim Southam: My instinct today would be to say that they're separate. As you know, the CRTC review is a comprehensive recommendation. Obviously, the rights market is fundamental; how it operates is fundamental. This goes directly to copyright, to what we're saying here.

Mr. Lloyd Longfield: Okay.

You mentioned the personal creator. When you're doing digital files and you're doing images, creating in the style of someone else can undermine the creator's value. Maybe it's a nuance that I'm spending too much time thinking about, but in a digital creation it's hard to trace the actual creator sometimes. Is that fair?

● (1600)

Mr. Tim Southam: I would say that this is something that actually does apply to our position with respect to the CRTC's recommendation, which is that in terms of creating content, in terms of creational content, virtually nothing about the digital universe makes our challenge any different; that is to say, origination is origination, and the Internet is essentially a platform or a pipe organized in a very different and very compelling way. Nonetheless, with respect to origination, we're talking about copyright. We're talking about identifying the creator in the chain in terms of rights ownership.

Mr. Lloyd Longfield: Thanks for letting me stretch my time.

The Chair: Thank you very much.

[*Translation*]

Mr. Bernier, you have seven minutes.

Hon. Maxime Bernier (Beauce, CPC): Seven and a half minutes?

The Chair: Okay, you have seven and a half minutes.

Hon. Maxime Bernier: Thank you, Mr. Chair.

My question is for the representatives from Artisti.

This morning, your presentation before the Standing Committee on Canadian Heritage was compelling. Members here have not had the opportunity to participate in the exchanges we had.

Earlier, you talked about the many exceptions in Canadian law and said that they may not be aligned with the Berne Convention. Can you elaborate on that?

Mrs. Annie Morin: Yes.

The Berne Convention sets out the three-step test that I mentioned earlier, but there is also the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the World Intellectual Property Organization treaties that were put in place in 1996. I am referring to the WCT, or the WIPO Copyright Treaty, as well as the WPTT, or the WIPO Performances and Phonograms Treaty. Those treaties provide for a three-step test that applies when one of the contracting parties would like to implement an exception to copyright in the laws of a country.

It is stated that exceptions must meet three criteria: they must be limited to certain special cases; they must not conflict with the normal exploitation of the work or other subject-matter; and they must not unreasonably prejudice the legitimate interests of the creator. As soon as a piece of legislation introduces an exception without any compensation measures, we are undeniably causing harm to creators.

Hon. Maxime Bernier: Do you think the fair dealing exception has been used too much?

Mrs. Annie Morin: I mentioned it this morning because I was quoting from a study by Mihály Ficsor. He has recently published a study analyzing the exceptions that apply to literary works. He said that, in his opinion, the Canadian exceptions do not meet the three-step test I just mentioned. However, there may be other exceptions.

Hon. Maxime Bernier: You represent the performers. Do you have any statistics on the decline in their incomes in recent years?

Mrs. Annie Morin: I don't have any statistics per se, but consultations were held from city to city, across Canada. You may have heard about the testimony given on that occasion by Pierre Lapointe, a well-known artist in Quebec. He said that, for 1 million plays for streaming music, he received a ridiculously small amount. David Bussières, who is part of the well-known Quebec duo Alfa Rococo, also testified to that effect. The amounts are small.

All we have to do is look at the royalties collected for non-interactive and semi-interactive webcasting. As we were saying earlier, the tariff set by the Copyright Board of Canada is 11 times lower than the one in the United States for the same period. By my calculation, to be able to buy a pint of milk, or a litre of milk, if you will—

Hon. Maxime Bernier: Don't talk to me about milk. A glass of wine perhaps.

Mrs. Annie Morin: Okay, but anyway, you needed thousands of plays to be able to afford it. However, a number of artists are often involved in a single sound recording. This is the case with symphony orchestras, for example. It then takes a multitude of streaming plays to generate even small amounts of money.

As for the specific statistics on the drop in incomes, I should be able to tell you exactly what the situation is. I can only talk about private copying. As I mentioned earlier, private copying accounted for over 50% of the Canadian levies we pay to artists, but that percentage has gone down to 7% in a few years.

● (1605)

Hon. Maxime Bernier: Earlier, when you explained your recommendations, you talked about the Copyright Board of Canada. Do you have any suggestions for reforming that board? You interact with the board. In your opinion, is there room for improvement, whether in terms of its role, the act or other aspects?

Mrs. Annie Morin: Yes, there are recommendations. In fact, we have made a number of them. A committee examined the issue, and Artisti prepared a brief on that occasion. If you are interested and think it's useful, I can send it to you.

Hon. Maxime Bernier: You could forward it to the committee

Mrs. Annie Morin: Of course. I'd be happy to do so.

It was in response to questions we had been asked. This is also one of our major concerns. We're still a small collective. Although we distribute $43 million to our 4,500 members, we do not have the same means as SOCAN, for example. For small collective societies, appearing before the Copyright Board of Canada is extremely costly. We are talking about tens of thousands of dollars. That's a real shame. Companies of Artisti's size feel that there may be a way to collect royalties and suggest tariffs for the artists they represent. However, we do not know exactly how much those royalties might be. We see that the tariffs are quite low. In many cases, this makes the exercise completely futile.

Hon. Maxime Bernier: In your recommendations, you talked about the exception that was established a number of years ago in relation to the decrease in royalties for the first $1.25 million of advertising revenue.

Is it a regulation or is it in the act?

Mrs. Annie Morin: It's right in the act. It is section 68.1. The heading describing the content of the section refers to "transitional" measures. Since it says so, it was supposed to be transitional. That was in 1997. How long is it transitional?

Hon. Maxime Bernier: If the government were acting in good faith, it could pass an order to abolish the transitional measure. I think my Liberal friends would all agree on that; that is a good thing.

Mrs. Annie Morin: Yes, and that would be $8 million more a year to split between performers and producers of sound recordings. That's significant.

Earlier, Ms. Prégent proposed an amendment to the definition of the term "sound recording". If this definition were changed and we could collect equitable remuneration royalties for music integrated into movies and TV shows, it would be possible to distribute $55 million equally to performers and producers of sound recordings. That is what Ian MacKay from Re:Sound, a company that collects equitable remuneration, said this morning. Those are significant amounts for us.

Hon. Maxime Bernier: Thank you very much.

The Chair: Thank you very much.

[*English*]

You had 50 seconds extra there.

Mr. Stetski, you have seven minutes.

Mr. Wayne Stetski (Kootenay—Columbia, NDP): Thank you.

Thank you for being here today.

I'm sitting in for Brian Masse, who's the usual member, so I apologize to the committee members if other witnesses have already answered these questions.

I'm quite interested in several aspects. Let's start with music. How does the average Canadian know, when they go on YouTube, for example, and they click on a music video they want to watch, whether or not the artist is actually receiving some kind of compensation?

Mrs. Annie Morin: In Canada, first, if you are clicking on a video, a specific video, you are doing it "on demand".

[*Translation*]

When it's done on demand, in principle, it should be covered by the contract between the artist and the producer.

That said, often, if you request a video, and then stop asking for videos, YouTube suggests videos to you and suggests other songs by the same artist, or another song by a different artist. At that point it's no longer what is known as on-demand service, but rather semi-interactive or non-interactive webcasting, depending on the term you use. You haven't asked for anything, but a content is suggested to you. Personally, I can't tell you whether there is compensation every time, in those cases.

● (1610)

[*English*]

Mr. Wayne Stetski: Could there be some kind of designation or stamp on these videos, so that if you want to do the right thing, you can do it? Right now I just go on, and you're right: maybe four or five other videos show up. I have no idea whether I'm actually doing something illegal.

[*Translation*]

Mrs. Annie Morin: One legislative solution would indeed be to provide compensation when those videos play, as is the case on radio. Ms. Prégent said so clearly: you don't deactivate the sound when you watch a video on YouTube. Generally, you listen to the music, and there are images that come with it. In fact, YouTube becomes a sort of radio with images. When radio stations use music, they have to pay royalties; it's what's known as equitable remuneration royalties. Fifty per cent goes to the artist, and fifty per cent goes to the producer. If such measures were in place, that would eliminate a great deal of the unfairness, and people could watch videos on YouTube and have some suggested to them without having to wonder what's going on and whether the artists are paid or not.

The other somewhat problematic situation is that people sometimes put up videos of their cats frolicking about, and background music is added. In those cases, there is no way of being sure. If the video is viewed many times, the one who put it up will eventually receive some money. That person is paid, but not necessarily the person who sings or plays the music you hear. Their work is used, but there is no assurance that the money will go to the creator.

[*English*]

Mr. Wayne Stetski: Could legislation help, potentially?

Mrs. Annie Morin: Absolutely.

Mr. Wayne Stetski: Related to that, are some of these Internet platforms, whether YouTube, Facebook, or any other Internet platform—and this is a question for all of you, if it impacts you—co-operative at all in dealing with these piracy issues, or do they just say, "It's not our fault; somebody else is posting this on YouTube"? Is there any accountability for any of the Internet providers to actually make sure there isn't illegal material showing up on their sites? If not, should there be?

Mr. John Lewis: No, they haven't been to date, and that's with notice and notice. Effectively, that's why it wasn't of much use, because they say, "We just provide the pipe; we don't regulate what's coming down it"—that sort of thing. However, I'd like to say that there are broadcasters, Bell Media and Rogers, that are part of Fair Play Canada. They have switched their position in trying to regulate this, because they're content providers and they also create content, so it's going to affect their bottom line as well. Even in the United States, rule 230, which everyone sheltered under in terms of content and responsibility for it, has been modified so that there are now growing requirements for responsibility for what's being aired on your platform.

Mr. Wayne Stetski: Would legislation help that, or is that asking too much of regulators?

Mr. John Lewis: Absolutely, legislation would help in that respect.

Mr. Wayne Stetski: My knowledge of this is very basic. If you currently come across piracy or illegal use, what sort of process do you follow to try to rectify it and how could that process be improved? What do you do if you see something and say, "The royalties are not being paid, and that's illegal"? What process do you currently have in place, and how could we improve it?

● (1615)

Mr. Dave Forget: There are two ways you can think about the FairPlay Canada proposal to the CRTC.

I speak to directors who find their work showing up on these platforms. Obviously, in many cases, they show up without licence. Directors are not in a position and don't have the wherewithal to be spending the time and investing the resources that would be necessary to track and then try to follow the legal avenues to have the content removed. It pops up in other places. It's a challenge, and our organization is part of the FairPlay coalition too. One of the virtues of the approach is to go to the source.

Often, the source of the content—where it's being streamed from—is located outside Canada. It's hard to reach it through the traditional legal structure that we have now. As a result, blocking those sources from entering our jurisdiction is a simple solution. We would say, in effect, that whatever happens outside of Canada will happen, because these streaming sources will probably continue to exist, and other jurisdictions will have to deal with them. Some have protocols that are very similar to what FairPlay already has in place—in places like the U.K., Portugal, and Italy—and these have been working.

What's being suggested is essentially blocking those sources from coming in, because asking the creators to be in the business of tracking this down on a piecemeal basis is a herculean task, and just not effective. So the suggestion is a very practical one, which is to say that when a site is overwhelmingly and blatantly engaged in trafficking content that it does not have the right to exploit and make available, it should be blocked.

The Chair: Thank you very much.

We're going to move to Mr. Baylis. You have seven minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): I'm going to continue with Mr. Lewis on that idea.

If I understand, this notice and notice system doesn't work for you.

Mr. John Lewis: That's correct.

Mr. Frank Baylis: FairPlay has come up with a solution in which you say that they'll identify.... You've listed a number of criteria that you think are fair and would ensure that the government is not heavy handed as well. Is that...?

Mr. John Lewis: That's right. It would be an independent body that would make a determination. There would be a hearing process. It would be a quasi-judicial administrative tribunal that would look at it and make a recommendation to the CRTC. Ultimately, it's the CRTC that would have that authority.

Mr. Frank Baylis: And they would instruct the ISPs to block that site?

Mr. John Lewis: That's correct.

Mr. Frank Baylis: Someone else had talked about the idea of what they call "whack-a-mole". They would block a site, and the site would show up somewhere else. Do you see this as a problem or concern?

Mr. John Lewis: The industry has to be nimble in taking this on. Here's the problem with notice and notice. You were asking about how you identify something when you might not know. With some of these websites, it's not as if there's bad spelling or that they look dubious. They're sophisticated and slick. You can pay through Visa. You have all the traditional norms that you would think of for a legal website. Most people won't be able to identify what is legal and not legal. The industry can because, obviously, we know who has distribution rights and who has the ability to exploit. There's a process in place for that, but it will have to be nimble.

Mr. Frank Baylis: Yes, to a certain degree it has to be nimble. By the same token, let's say that people are using a Kodi box, and these five sites are blocked. They have to come back up, and then somehow, they have to tell those people who wanted pirated material where they are, right?

Mr. John Lewis: Right.

Mr. Frank Baylis: And in the process of telling them, they could be telling the CRTC as well, right?

Mr. John Lewis: That's right.

Mr. Frank Baylis: So if we had a stronger method, that would be very helpful.

Mr. John Lewis: What's good about this is that the industry would sort of self-regulate. We would bring those cases forward, and there would be an opportunity for the website to respond and say, "No. That's incorrect information. We did have the ability to exploit this product," that sort of thing. There is a process in place. I think there are 30 other countries that have something similar.

Mr. Frank Baylis: Thirty other countries have it?

Mr. John Lewis: Don't quote me on that, but I know it's a number of countries. I'll look to the Directors Guild.

You notice that I was giving them water earlier.

Mr. Frank Baylis: That's right, the Directors.

Mr. John Lewis: They're always directors. You've always got to serve the directors.

Mr. Frank Baylis: I got that. Okay.

Mr. Tim Southam: It's because of our way bigger union.

Voices: Oh, oh!

[*Translation*]

Mr. Frank Baylis: I'd like to go back to the Beijing Treaty on Audiovisual Performances, with regard to video clips. I believe it was Ms. Morin who spoke to this, or perhaps it was Ms. Prégent.

Did I understand correctly that under the terms of this treaty, a video clip is treated more like music, as opposed to a video?

● (1620)

Mrs. Annie Morin: No, no, no.

In fact, the Beijing Treaty recognizes that artists should be given all of the royalties and exclusive rights, just like the creators of a work. The performing artists should also be given those rights.

For the moment, given the wording of Canada's Copyright Act, artists from the music sector are the ones who benefit from copyright. There is a specific section in the Copyright Act that says that if a performing artist agrees to have his performance incorporated into an audiovisual work, he waives the exercise of his section 15 right.

Mr. Frank Baylis: Are you saying that according to the Canadian Copyright Act, if a performer agrees to sing a song on a video clip, he has no right to his royalties?

Mrs. Annie Morin: In fact, he has no copyright. However, could he negotiate an arrangement through his contracts with the producer, for instance?

Mr. Frank Baylis: Perhaps he could, but from the legal standpoint, there is nothing in the law that says that he is entitled to royalties.

Mrs. Annie Morin: Exactly. He may receive them, not as a performer, but as the author of the work. The singer-songwriter is treated differently.

When you consider a song, there is the work itself, on the one hand, which includes the words and music.

Mr. Frank Baylis: So, that concerns what was written by that composer, by the one who wrote the music.

Ms. Sophie Prégent: Yes, exactly; the words and music.

Mrs. Annie Morin: There is no problem with that.

Mr. Frank Baylis: However, the performer is not treated like the composer.

Mrs. Annie Morin: No. He is for the sound recording, but not the video clip.

Mr. Frank Baylis: In the case of a regular song played on the radio, is the performer treated like a composer?

Mrs. Annie Morin: Yes; he receives his equitable compensation just like the composer will receive his communication right.

Mr. Frank Baylis: It is only under the Canadian law that a performer is not covered in video clips. However, when the song is played on the radio, he is paid his royalties.

Mrs. Annie Morin: That is in fact one of the changes we recommend be made to the law. On the one hand, there should be copyright royalties for artists who perform in audiovisual works. On the other hand, the definition of the term "sound recording" needs to be changed so that when a video image accompanies a song you listen to, it is not excluded.

Mr. Frank Baylis: So at this time, it is excluded.

Mrs. Annie Morin: Yes. At this time, that particular exclusion is in effect.

Mr. Frank Baylis: Why is that? Is there a reason?

Mrs. Annie Morin: I don't know. I may not have been born yet. No, that's not true; I had been born by 1997, as you can probably imagine.

Mr. Frank Baylis: Okay, we will look into that.

I have another question, about rates. I believe I heard you say that in Canada, YouTube or Spotify content is priced much lower than in the United States.

Mrs. Annie Morin: Yes, precisely.

As I said, there is a rate for non-interactive or semi-interactive webcasting. I will explain the difference.

Mr. Frank Baylis: I understood it.

Let's start with non-interactive streaming.

For comparison's sake, while artists in the United States are paid 11¢, artists in Canada are paid only 1¢, correct?

Mrs. Annie Morin: Yes, exactly. They are paid eleven times less. It is 10.78¢, specifically.

Mr. Frank Baylis: So according to these rates, if it is 11¢ in the U.S., it's 1¢ here.

Mrs. Annie Morin: Yes.

Mr. Frank Baylis: And that rate is only for...

Mrs. Annie Morin: It's for non-interactive and semi-interactive streaming.

Mr. Frank Baylis: And why is there this discrepancy?

Mrs. Annie Morin: I couldn't tell you. It was a decision made by the Copyright Board of Canada. I don't know what criteria were used to set rates that are so much lower here than in the U.S.

And currently the gap is growing, because since then, the rates in the United States have increased.

Mr. Frank Baylis: It is the Copyright Board of Canada that makes these decisions?

Mrs. Annie Morin: Yes, exactly.

Mr. Frank Baylis: This isn't really something that is ever submitted to us.

Mrs. Annie Morin: You could nevertheless include guidelines in the act to set criteria, for instance.

Mr. Frank Baylis: With regard to YouTube or Spotify, are you satisfied with the amount, or not?

Mrs. Annie Morin: With regard to non-interactive and semi-interactive streaming, no. Regarding YouTube, we can't be happy with the amount, because as I said, for the time being it is zero, aside from certain arrangements that might be included in contracts between artists and producers.

The Chair: Thank you very much.

[*English*]

Mr. Jeneroux, you have five minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, Mr. Chair, and thank you, everybody, for taking the time to be here today.

I do want to go back to you, Mr. Lewis. You made some interesting comments earlier about the FairPlay proposal, which has attracted a great deal of concern from those who want to preserve net neutrality. You did mention that you support net neutrality, which is good to hear. However, I do want to get to the bottom of some of your comments.

Currently, as you indicated, the FairPlay proposal is asking that a board of industry players be created, who would ask the CRTC to demand that ISPs block websites they deem to be perpetuating piracy. The chief concern with this proposal is that there would be no court involvement before the site would be taken down. In response to this concern, you said—and other FairPlay representatives have said—that complainants could appeal to the Federal Court of Appeal after the site has been pulled.

Why not address these genuine concerns head-on and change the proposal to bring in court oversight before the offending sites are taken down?

● (1625)

Mr. John Lewis: I used to work at the Ontario Labour Relations Board—again, a quasi-judicial tribunal—the decisions of which would be in effect.... There was the ability for any party to bring a judicial review or application to the courts to review that, but the decision would be in effect. It's our tradition that those decisions are in effect pending a judicial review. An offending party could seek an injunction to stay the decision of the CRTC, pending a review by the Federal Court of Appeal. There is already built into the system, then, the ability for someone, if so aggrieved, to bring that kind of motion to stay the effect of the CRTC determination, pending an appeal at the Federal Court of Appeal. Once again, it's timing in all of this.

We're a North American organization, and in the United States we have taken on the current administration with our concerns about net neutrality, and we're spending considerable resources fighting that fight. We take it very seriously. I know that any time you talk about any type of blocking, my own members, particularly younger members, get very nervous and concerned about it.

Again, I look at other jurisdictions.... And here I would note that I was wrong: it's 40 countries and not 30 countries that have enacted similar legislation elsewhere. Sometimes they bring in a judicial component earlier in the process, but there is the same type of methodology. There is an ability, anyway, to seek to stay a decision pending a review by the court of appeal.

Mr. Matt Jeneroux: What have you done in the United States recently, then? The concerns about net neutrality seem to have subsided somewhat. You said you have been spending a number of resources. What exactly are they?

Mr. John Lewis: The whole industry was lobbying, and I don't know if it was the Senate or Congress, but they didn't get the votes to enact the provisions the current administration wanted to enact.

Mr. Matt Jeneroux: It's good to hear that you're supportive of net neutrality, because I do know there has been a lot of concern within the community about that.

In my last minute I want to quickly go over the Kodi boxes. You brought those up at the beginning. Where are these coming from? If they are shut down, are they starting back up? Are these parties outside of Canada that are setting up these boxes? Are they being sold underground? I hope you'd appreciate that I don't know much about them, which I guess is probably a good thing in the witnesses' mind. Could you just give a little bit more background for us.

Mr. John Lewis: We'll provide more background. We're going to provide a fuller statement to this committee with our submissions.

However, here's the problem in all of this. Because it's become so blatant, the need to be underground has been alleviated. No one is taking any enforcement issues seriously because it's so blatant. That is the real concern. There's a blasé attitude towards it. To some, it's not a physical good; it's not stealing a pack of cigarettes or a car. It's this notion of intellectual property.

We were criticized as an industry, with people saying that there is no other place to get this, that the industry was slow off the uptake in having a vehicle like Netflix, CraveTV, and all of these others that weren't there and weren't too expensive. That's been taken care of. That's been addressed. What's the excuse now, other than that you just want free product?

The Chair: Thank you very much.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much.

My first question will be for Tim. When will the next series for *Lost in Space* be out? I went through that series very quickly.

Voices: Oh, oh!

● (1630)

Mr. Tim Southam: Season 2 was ordered two weeks ago. I was sitting in Netflix's office when it happened. It's a crazy lobby. It's so busy. Three of the four walls are *The Crown*, and we had a little cardboard thing for *Lost in Space* in the corner. I'm hoping that'll change.

Mr. Terry Sheehan: Okay. Soon, then?

Mr. Tim Southam: It shoots in Vancouver.

Mr. Terry Sheehan: That was my extra 20 seconds that you owed me....

Mr. Tim Southam: It shoots in Vancouver with a great Vancouver crew.

Mr. Terry Sheehan: That's great.

The Chair: We'll have to go and visit the set, just for copyright.

Mr. Terry Sheehan: Just for copyright—good.

Thank you very much. That leads me to my next question. I'm trying to figure out how Netflix, versus, say, a traditional movie process, compensates the artist. Is it similar? Is it different? I noted that Netflix is up to about $8 billion in projected spending in future years. It was around $6 billion last year, or the year before, so obviously it's expanding. Could you explain if there is a difference in how the compensation would work?

Mr. Tim Southam: Netflix engages in three kinds of business, or two, really. One is as a rebroadcaster of existing works. It will do deals with whoever the rights holders are for existing movies and series.

In terms of original work, which is, as you say, the $8 billion a year that it's planning to spend worldwide, that's almost the same.... I would say that's exactly the same contracting process as any form of contracting that happens now in the linear universe, which is to say that they either hire a producer who then engages people like me and everyone else—writers, etc.—to provide their services, or they act as a studio and remain a full owner of the show and produce it themselves.

Of course, there's a raging debate internally in all of those organizations as to whether they want to be studios or merely broadcasters, which is an interesting term to use for an SVOD service. They are acting exactly as broadcasters in terms of contracting and getting the work produced.

Mr. Terry Sheehan: The compensation they receive through the copyright laws in Canada is the same.

Mr. Tim Southam: In other words, the compensation I receive?

Mr. Terry Sheehan: Yes.

Mr. Tim Southam: We're in collective bargaining. It's in constant definition, but the format is almost identical to the linear universe.

Mr. Terry Sheehan: Okay.

Thank you for answering that, because things have changed. The pirates were in the theatres with their long coats, trying to keep their cameras steady, and putting these on the Internet, and then—

Mr. Tim Southam: I might add one thing, by the way. That contract includes a clause that purchases assumed moral rights the artist may have in the work. There's a recognition embedded in that contract, in both the linear space and the digital space, that we are in fact the original owners of the audiovisual material.

Mr. Terry Sheehan: That's interesting. That just brings me to the difference. The Internet was a curse and a blessing at the same time for the creative economy. In essence where things have changed is that the pirates are on the Internet, but the creative industry is also on the Internet. I was just trying to draw a comparison, because we have Netflix and we have Spotify. We heard some testimony that some weren't satisfied with the compensation on Spotify. That was what we heard recently, so I'm just trying to pull that out.

When we talk about the Internet and the pirates who are on there —John, perhaps you were talking about this—is there a particular country or area that is known to do this?

Mr. John Lewis: Canada.

Mr. Terry Sheehan: Canada is number one?

Mr. John Lewis: When the whole camcording issue—

Mr. Terry Sheehan: The camcording, that's the guy in the theatre....

Mr. John Lewis: Yes, the camcorder in the theatres. What was one of the largest centres for that? Montreal.

Mr. Terry Sheehan: I've heard that before, but are we still number one?

Mr. John Lewis: No. That has dropped off. There were major quality issues and a whole bunch of other issues.

Mr. Terry Sheehan: It was a certain province. I'm not going to get into that, but it was that.... Nowadays, the new pirates, the ones who are not going into the theatres but are somehow hacking into the system and pulling out the content, which countries would be they be from?

Mr. John Lewis: In terms of where it originates from—

Mr. Terry Sheehan: Yes.

Mr. John Lewis: —no, but as David mentioned, that's why the FairPlay application is there, because there are no borders. This is digital. They can go anywhere, originate anywhere, and broadcast anywhere. In terms of where they're acquiring the pirated materials, I'm not aware of stats for the locations.

Mr. Terry Sheehan: Okay.

The cease-and-desist notice isn't working because people are just ignoring it? There are no teeth to it.

Mr. John Lewis: There's no consequence.

Mr. Terry Sheehan: Okay. There's no consequence.

My last little bit—I only have a couple of seconds—is for you, Artisti. You noted that you were formed in 1997. I saw that there was a recommendation in 1997 to change the $1.25 billion on the first bit of advertising. Was that $1.25 billion the number in 1997? Is that still the number today?

● (1635)

Mrs. Annie Morin: Yes.

Mr. Terry Sheehan: Is that the reason you guys formed?

[*Translation*]

Mrs. Annie Morin: In fact, Artisti was created in 1997, following the changes that were made to the act to introduce equitable compensation rights and the right to remuneration for private copying. At that time, the Union des artistes, which is a type of union, created its own collective management firm in order to be able to give performing artists in the music sector the opportunity of collecting the royalties introduced in 1997, that is to say the equitable compensation rights and the remuneration for private copying.

Regarding the exemption for the first $1.25 million, I must say that at the time, broadcasters were rather unhappy that they would from then on have to pay equitable compensation royalties. That exemption was probably introduced at the broadcasters' request.

Despite that, now that several years have gone by, we see that radio is an industry that continues to function and to generate large revenues. That is why we say that there is no longer any rationale for that exemption in the law.

The Chair: Thank you very much.

[*English*]

Mr. Lloyd, you have five minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you.

Forgive me, I'm a little bit sick, but I'll try to get my questions out.

Mr. Lewis, I'm curious about your comment. Your solution, which FairPlay Canada has asked for, is to block these websites from Canadians. I'm aware there's technology available that allows you to block your IP address, a VPN blocker, and to say that your signal is coming from the United States, for example. I know a number of people use that to get American Netflix in Canada.

What is your comment on that? Is there a way to solve that runaround, which would undermine your comment?

Mr. John Lewis: I'm not sure of the technology. I am aware of it, but I am not sure how easy it is to circumvent the system by using that. I'm just not aware of that.

Mr. Dane Lloyd: I'm just worried that, if we were to implement that, it would be such an easy workaround to pretend to be in a foreign country—although I'm sure it would catch some people. Maybe we can get some further information on that. We'll look into it.

Mr. Sheehan took my question related to the culprits. You noted that about 1.88 billion sites have been visited by Canadians.

Mr. John Lewis: Yes.

Mr. Dane Lloyd: You sort of answered this, but is the content mostly coming from foreign countries or is this Canadian pirating content?

Mr. John Lewis: The Canadian production *Letterkenny* is pirated. We have productions made in Canada that are—

Mr. Dane Lloyd: I mean the pirates. Are the pirating websites Canadian-based websites?

Mr. John Lewis: I think Pirate Bay at one time was based in Canada, and they have been a very flexible and very transient group. I think they were based in Vancouver. Other than that, I'm not sure, but they were one of the largest players as well.

There's all this discussion of Netflix, and there's always this comment that they're not pulling their fair share. I know that the CRTC and a new committee are going to be focused on that. We shouldn't also forget that next to Warner Bros., they're probably the largest producer of product in Canada as well. I know this sometimes gets lost in questions about whether they're contributing to the industry, adding value, and everything else. They're going to have the largest production in Montreal this year. I just wish that sometimes it was better known that they are a big contributor to our industry.

Mr. Dane Lloyd: Thank you. I appreciate that.

My next question is for Ms. Morin or Ms. Prégent.

You talked about exceptions being problematic. Can you describe which exceptions, in your mind, are the most problematic?

[*Translation*]

Mrs. Annie Morin: I'd like to mention two exceptions that were included in the law in 2012 and that complicate the situation enormously when it comes to consumers' choices.

In 1997, a private copy regime was adopted to allow consumers to reproduce music in the privacy of their homes. This was already being done quite commonly. Everyone has probably made or owned a recording of various songs they listened to in their cars on their way to the cottage or elsewhere. In 1997, the government determined that people would from then on be allowed to make such recordings for their own personal use, but that creators would be paid a royalty for every blank audio recording medium that was sold.

Unfortunately, the court decided that blank audio recording media did not include digital audio devices. That is why that royalty only applies now to blank CDs, a medium that is used less and less, it must be said.

In 2012, an exception was included in the Copyright Act to make it possible to copy music using devices that were not already covered under the private copy regime. In other words, it became legal to make copies on your iPod, if there are still any around, or using your iPhone. However, as opposed to what was done quite judiciously in 1997, when the decision was made to compensate creators for copies of their work, no compensation was provided for in 2012. That is unfortunate.

An exception was also included in the act for cases where people record a program in order to watch it later. There again, unfortunately, no payment was included in the act to compensate creators for this use of their work.

Ephemeral recordings made by broadcasters for their broadcast activities were also included. As I explained...

● (1640)

[*English*]

Mr. Dane Lloyd: If I may interrupt, I'm familiar with some things in television where you can record programming to watch at a later time. Is that an issue or are the broadcasters compensated for that?

[*Translation*]

Mrs. Annie Morin: If people made copies using their tape recorders, for instance, the private copy regime did not apply. Audiovisual devices are not covered in any case. That is not included in our legislation. However, it is in other countries, such as France, where private copy royalties are paid when films are copied. We don't have that in Canada.

[*English*]

Mr. Dane Lloyd: But like Bell and Rogers, they have their own recorders that they can record their programs with, but that's not a problem you're saying? It's people using a personal recorder at home?

[*Translation*]

Mrs. Annie Morin: As to that precise aspect, if Bell or other companies provide the means to make recordings, the cost of accessing that service may include costs to compensate for that, which may be included in people's subscription fees. I don't know how things work in that sector. As I said, we unfortunately do not manage audiovisual rights, as there aren't any for the time being.

[*English*]

Mr. Dane Lloyd: Thank you.

If Canada ratifies the Beijing treaty, how will that impact you?

[*Translation*]

Mrs. Annie Morin: Are you talking specifically about Artisti, the collective management firm, or about performing artists in general?

[*English*]

Mr. Dane Lloyd: Please be as general as you can.

[*Translation*]

Mrs. Annie Morin: Right from the outset, this will give them a moral right over their performances. That is already very important. It will no longer be possible to use audiovisual performances for a cause or a product without first asking the artist for permission. Nor will people be able to alter their performances in a way that distorts them.

The moral right will be introduced when the Beijing Treaty on Audiovisual Performances is implemented, to the extent that Canada ratifies it. This will give all of the copyrights to the performing artist. Once you have all of the copyrights, you can continue to negotiate in contractual agreements.

Ms. Sophie Prégent: We are talking a great deal about the music sector. I am the president of the Union des artistes. In Quebec, we've managed to compensate for certain rights through our collective agreements. The Union des artistes manages 55 collective agreements in all sectors. This, of course, involves music, but also hosts, singers, and dancers. Through our collective agreements, we have managed to protect ourselves. The music sector is an exception. In fact, I would say that it is the example that should be avoided.

Over time, in Quebec, we have managed to protect ourselves to some degree thanks to the Status of the Artist Act. We have what are known as residual rights. In fact, we are paid for a day's work, a bit like plumbers. For the rest, we receive a percentage of the fee that was negotiated at the outset. For instance, we agree that the residual rights will be equivalent to 30%, 40%, 50% or 80% of the negotiated fee. So we are in another system that protects the artists, insofar as we remain within that framework.

Of course, the environment or the market tends to completely change the way in which artists are remunerated, and flat rate fees are increasingly being asked for for digital media. Do you understand what I mean? That is completely different.

● (1645)

[*English*]

The Chair: Mr. Jowhari, you have five minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Five minutes, okay. Thank you, Mr. Chair.

Thank you to the witnesses.

If I may be allowed, I'm going to take the conversation in a slightly different direction.

We've spent a lot of time on piracy, but I would like to spend a bit of time on the disruptive elements that have been introduced to the TV and film industry, as well as the emerging technology. Could you all share with me what you have seen over the last five years with the different and emerging technologies that disrupt or may have hindered or helped your industry?

Anyone can start.

Mr. Tim Southam: Just as a brief preamble, I too want to acknowledge the fact that the major SVOD services have provided a platform for compensating artists that is second to none. It's unassailable right now. It's fantastic. The contracts are solid, and the compensation is completely fair. In some ways the rise of the SVODs has given us temporary relief from the huge problem of all the other services out there that are trading in stolen goods.

It's very important to recognize that as a stopgap for this generation, the SVOD services like Netflix and Crave really need to be praised for devising a mechanism by which artists are compensated for their work. Those contracts are very strong models for where the law should go in protecting artists' ownership of their work before it's exploited. That's my initial comment.

In terms of the disruptions, I'll let Dave start that rainbow discussion. That's a huge one.

Mr. Dave Forget: Really, the question is where to begin. We're in an era where there's an abundance of choice and a diversity of content. There's never been a better time to be a viewer; there's so much there to pick from. It's triggered a lot of investment in the creation of content. In many ways, it's been a terrific tonic for the industry, because we're seeing a lot of activity.

Canada has benefited from that. Our members work on shows—and we've mentioned a couple—*Lost in Space*, *Star Trek*, but also *The Shape of Water*, and the list goes on—but they also work on Canadian programming.

There's been a real boom in production activity. That's been good, but the counterpart to that is that there's a lot more content coming over. This is a positive thing, but it's made for a much more competitive environment. As an example, we see the strengths of the work the government has been doing. That was demonstrated in the report and recommendations of the CRTC that to be competitive internationally, and to build on those strengths of having a deep pool of talent, a great infrastructure, the financial capacity, and the experience to be competitive internationally, we need to continue to have a robust system that strengthens the Canadian content side of it.

Mr. Majid Jowhari: Talking about the robust system, in your opinion—either of you can interject—does the Copyright Act, as it is today, support or protect the rights of the producers in the film industry, or does it need to be amended or strengthened? Is it good as it is?

Mr. Dave Forget: I'll let everyone get in because that's a great question.

I'll begin with exactly one of the reasons that we're here today. The act is ambiguous with regard to how "author" is defined. It states "author" but doesn't identify who the author is.

The case that we've made, I believe, today is that screenwriters and directors are authors. The reason I bring this up is that one of the ways the act can be strengthened is to give clarity to that question. As you've probably heard already, many of the things that we do—the waiving of moral rights, the assignment of exploitation rights to producers and distributors, and so on—to ensure that we are very motivated to see the full exploitation of the content that our members create, for obvious reasons.... It's for financial reasons, and we want to see that. We think that is positive.

Strengthening that by having that clarified in the Copyright Act is a modest change that would bring clarity. What would that do? Tim and others have mentioned the extent to which new players on the SVOD side have been making investments. When you ask Crave, Netflix, and others what they are making, they say—in the jargon they use—that they're making a TV show. When our members are in Vancouver at a sound stage, whether it's one show or another....

As we go forward, as there are more disruption in the marketplace, as newer business models come up, we need to have those collective agreements. Madame Prégent made an excellent argument, and this is very much the experience of DGC. Those collective agreements are the vehicles for codifying those sets of rights and that transaction. But a strengthened Copyright Act would give us the tools to ensure that as new platforms come on—I'm finally coming to the punchline, forgive me—when these new technologies, new models emerge, it would compel that conversation with authors, writers, and directors, and those who are commissioning and financing the content, who are orchestrating the construction of the project over the rights and the fair compensation.

● (1650)

Mr. Majid Jowhari: I'm out of time in about a minute, but can you all make a submission to cover the area of the copyright, especially around the definition of authorship? How could it be amended or strengthened to protect or facilitate the emerging technologies?

Thank you.

The Chair: We're going to move to Mr. Stetski. You have two minutes.

Mr. Wayne Stetski: We're down to short snappers.

I'd like you to think a little about the government body or department that has the most influence or control over your lives currently. What's the number one thing they could do tomorrow to help your artists be more successful?

We can just quickly go down the line.

Mr. Tim Southam: It's money. The entire conversation around audiovisual is producing the funds required in a small economy to produce competitive, compelling programming for Canada and the world.

Mr. Wayne Stetski: So, it's funding.

Mr. Tim Southam: The second thing is to understand that we have, as a country, an opportunity and a mandate to create works in our own voice, and those are often drowned out in the international marketplace by larger players. Our ministry and our government have an opportunity to ensure that Canadian voices continue to be heard.

Mr. Dave Forget: I think with what we've seen recently, we're beginning to see a path for creating a coherent system where all of the participants are contributing, in the broadest sense of the word, whether it's investment or promotion—as you see fit—into the health of the industry. That includes the players located outside Canada who bring their content in, and those within Canada, both from the traditional broadcasting system and the online broadcasting world.

We saw last week with the CRTC's thoughtful report that there's a pathway to getting there, and in the review of the acts to come, the broadcasting and the telecommunications acts, there's a path.

Mr. John Lewis: I would just say that what the CRTC has done lately, I think, gives everyone a sense of cautious optimism that the right questions are being asked.

My concern is with the influx. Our industry is booming right now. A lot of it is frothy because of a lot of the foreign service work that's coming in with budgets that make no sense to me. I work in the industry. The budgets that are being spent on TV production are like nothing I've ever seen. I'm sure there's a business model and people who are smarter than me can figure it out.

I'm nervous that in that wash and in all of those essentially feature films being made every week, I just don't know how our domestic industry will match up with that. You need both. You need a foreign service industry and you need a domestic industry working in harmony together, and I'm nervous about where we're going because of that. There's so much money flooding into the industry right now.

● (1655)

Mr. Wayne Stetski: With your permission, Chair, can we continue?

The Chair: Go ahead.

[*Translation*]

Mrs. Annie Morin: On the platforms that distribute cultural products, often the draw that will make people tune in to view a cultural product is the performing artist. People want to listen to Adele sing a song, or see a Pierre Lapointe video, for instance. They will watch performances to see content provided by performing artists. Those platforms benefit from the drawing power of the performing artists to generate their business.

It would be good if the creators, like the platforms, could benefit from the economic spinoffs generated by the drawing power of performing artists. We could follow the model proposed by Fair Internet for Performers to guarantee remuneration for performances broadcast on the Internet.

The Chair: Thank you very much.

[*English*]

We have some time for a few more quick questions.

I believe you're going to start, Mr. Sheehan.

Mr. Terry Sheehan: Thank you very much.

Dave, you mentioned *The Shape of Water*. A guy from the Sault, Paul Austerberry, won an Academy Award—I know him quite well—and David Fremlin from the design team shared it. These are very good friends of mine, and I know how important the creative economy is, especially in film and television production.

In this conversation that we had about copyright, in your presentation it was assigned to the author at 50 years. We're also exploring how we deal with copyright as it relates to Canada's indigenous people. One of the issues we're finding, and on which I'm doing my research, is that we know that we need to ask for permission, but a lot of times that production, that piece of work, doesn't belong to an individual. It belongs to a first nation or a clan or a piece of it.

Do you have any ideas or thoughts on how copyright changes could help Canada's indigenous artists, and how we might enhance that and have more creative artistry in the indigenous world?

Mr. Tim Southam: I think one template solution that one might want to propose to various communities is that copyright not be automatically assumed to belong to the owner, but to the content creator, the originator of the material. We should explore how that is described in different communities, and be very sensitive to it.

To automatically say that the original copyright holder is the owner, as opposed to the person engaging in the act of taking it from the blank page or the open set into something that exists for all to see, is maybe the first mistake we made in this ambiguous definition of copyright. Moreover, perhaps being more precise in favour of the author would get us closer to not taking things from people who have made them.

Mr. Terry Sheehan: Yes, that would be good.

I'm going to pass my time to Lloyd. We're going to share some time down the line.

Mr. Lloyd Longfield: Thank you.

I just have one question and then I'll pass it over to Mr. Badawey.

On the business model, the original creation has a cost attached to it, and the distribution afterwards has another cost. Because we're not paying the performers, does this copyright have an impact on the business decisions to create works in Canada? Do people say that because they don't have to pay the distribution expenses if they create in Canada...? Is there a connection there on the business model?

Mr. Tim Southam: What is the incentive to make things here if you're a producer from outside?

Mr. Lloyd Longfield: Yes, does our Copyright Act impact the cost decision of creating works in Canada?

Mr. Tim Southam: No, I think the only thing the Copyright Act would do in that specific dynamic is produce greater clarity in the rights market.

Mr. Lloyd Longfield: Okay. That's terrific.

Thank you.

Mr. Badawey.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Lloyd.

I have just a few questions with respect to the business model and, of course, with that, establishing sustainable pathways.

Mr. Southam, you mentioned the fact that financial benefits can be accrued over time, and injected into the overall business model. But I want to concentrate on the Copyright Act and the mechanisms that all of you had mentioned earlier with respect to the Copyright Act. I am trying to walk away with some tangibles so we can make some recommendations at the end of the process.

I've heard mechanisms mentioned with respect to new technologies and how we can capture a lot of the pirate sites. With that second point, is an independent organization to monitor the pirate sites engaged in this kind of activity?

Instead of a separate entity, would a sub-entity of the CRTC suffice?

● (1700)

Mr. John Lewis: Speaking for the IA, yes. We're looking for an objective third party in whom the industry and the population of our country would have confidence that it would look at it in a fair, impartial way.

Mr. Vance Badawey: Ensuring proper legislation and ensuring the first right of copyright, I'm hearing that as a priority as well.

Mr. Dave Forget: That's exactly what we're saying, that writers and directors are the authors of audiovisual content and therefore the first copyright owners.

When it comes to all the things you talked about in your prior question about the exploitation, the distribution, and the financing, they go hand in hand. As an example, notwithstanding that the act is not clear on the question, our director members are asked to waive moral rights as part of the contract they engage with when they're creating content. There is an implicit recognition of their moral rights, if it isn't spelled out in the act. What we're asking for is clarity for something that is already the practice in our industry.

The second point to that is that nobody who creates content doesn't want it to be seen. There is nobody more motivated to have that content out in the world and fully exploited than the people who make it. What they're seeking is fair and equitable compensation for their work.

Mr. Vance Badawey: Thank you.

Someone made the comment that the royalties for streaming are compensated times eleven in the U.S. versus Canada. I'm not sure who made that comment. Can you dig a bit deeper into that one?

Mrs. Annie Morin: Maybe I could provide you with the notes that the Copyright Board had written pursuant to the decision that it rendered in Re:Sound Tariff 8. They say in that document what the rate is for the U.S. at the same time. When you make the calculation of what is paid in Canada, it's eleven times.

[*Translation*]

It is 10.78 times lower.

[*English*]

Mr. Vance Badawey: With all that said, I'm assuming that, if these are taken care of as take-aways for the committee to consider as recommendations moving forward, it would position you on a more level playing field in competition with the U.S. markets.

[*Translation*]

Mrs. Annie Morin: It's fascinating to see that on one side of the border, listening to online streaming generates very little money, as compared to what it yields one kilometre away on the other side of the border. On the other side of the border, it generates 11 times more money. It is fascinating that in two neighbouring countries with strong economies, there is such a disparity in the value of a single instance of online streaming.

[*English*]

Mr. Vance Badawey: Is there anything else that you want to add besides what I had already mentioned? That's what I took away. I might have missed something, so is there anything you want to add or anything I missed, which in fact the committee should take into consideration moving forward?

Mr. Tim Southam: We're all tempted to look at the new Internet environment as a very different environment in terms of rights management, in terms of the creative act. I would challenge anyone leaning into the question to consider what it means to be a writer or a director alone in a kitchen or in apartment, entering that universe, and to articulate a rights environment where that person is now going to do it for free just because we're working with a different set of wires. That's a slightly reductive summary of the Internet, but in terms of the creative act, it's one of our great challenges.

The Chair: Thank you.

Be very quick.

Mr. Frank Baylis: Mr. Southam, what you're proposing doesn't exist in the States right now, does it, that they recognize more rights for the director and the screenwriter? It seems to say that it exists in Europe.

Mr. Tim Southam: No, the U.S. and Canada do not have that in the law. Our concern is for all the creators who do not actually belong to our union, because our contracts—the Directors Guild of America and the writers guilds of America and the Writers Guild of Canada and the Directors Guild of Canada—contain recognition of the intellectual property component of our work, and also the moral right component of our work. It's in our contracts. It isn't in the law, so anyone not working inside that contractual universe—

● (1705)

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): Moral rights in Canada, but not in the United States.

Mr. Tim Southam: Correct.

Mr. Frank Baylis: I'm asking about the United States. This does not exist in the United States—

Mr. Tim Southam: No.

Mr. Frank Baylis: —but it does in Europe.

Mr. Tim Southam: Yes.

Mr. Dave Forget: Yes, and if I may add to that, 1,300 members of the DRCC received compensation last year. There are only 800 or so working members of the DGC. We don't cover the entire universe of working directors in Canada, so there are many who don't get the benefit of the collective agreement that's the umbrella for our members.

The Chair: Thank you very much.

On that note, I would like to extend a warm thank you to our panellists for coming in and sharing information with us today. We have quite a bit of work ahead of us. As you can see, it's quite the complex file. Once again, thank you very much for showing up.

I just need to spend two minutes with the group. I won't suspend, but if you want to say goodbye, we'll get right back down to it.

[*Translation*]

Mrs. Annie Morin: Thank you very much.

[*English*]

The Chair: All right. Let's come back, everybody. Thank you very much.

Last week, the Ukraine delegation said they wanted to meet. We said that we couldn't do it during a committee. We're trying to arrange a lunch for Tuesday, June 12. I know that a couple of people have already said they would go. Lloyd and I will. Is there anybody here who would like to attend that lunch? We're just making the arrangements now.

Hon. Maxime Bernier: What is the subject?

The Chair: It's the committee members and the Ukrainian delegation. They're in town for a couple of days. On that delegation, you likely have the chair of the subcommittee on state financial control and activities, a first vice-speaker, the secretary of the Canada-Ukraine Parliamentary Friendship Group, and the chair of the subcommittee on the assessment of bills regarding influence on budgets. It's that sort of stuff. We're looking at lunch on Tuesday, June 12, at noon.

● (1710)

Mr. Wayne Stetski: Just so I can let Brian know, where will it be?

The Clerk of the Committee (Mr. Michel Marcotte): It's in Room 356-S. It's on the Senate side. Unfortunately, there was no room in the restaurant, and none of the House of Commons rooms were available.

The Chair: It would be an hour. We'd have lunch. We need to know numbers.

Mr. Wayne Stetski: With a name like Stetski, I absolutely support your having the lunch.

The Chair: All right. Will you come?

Mr. Wayne Stetski: Well, Brian would be there, I think.

Mr. Lloyd Longfield: Don't tell Brian about it.

The Chair: Can I see how many people will attend?

Mr. Frank Baylis: I could drop in later on, maybe, but I can't be there the whole time.

Mr. Terry Sheehan: I could drop by, maybe.

Mr. Dane Lloyd: It's a cultural lunch.

The Chair: So, we have three people, and we'll see.

We're good? We don't need to do this, do we?

The Clerk: We need a motion, because I can't pay for the meal.

The Chair: The meal will be paid for.

Mr. Dane Lloyd: By the Ukrainians?

The Chair: By the Ukrainians? No we're paying their meal.

Mr. Frank Baylis: We're paying for the perogy part.

The Chair: It's nice to have interaction. We've done this before, and it's nice to have off time where you can talk to your cohorts, especially the Ukrainians—

Mr. Lloyd Longfield: I move that the clerk of the committee take the necessary steps to organize a working lunch between INDU committee members and the Ukrainian delegation on Tuesday, June 12, at noon, and that the cost of this activity be covered by the committee's budget.

Hon. Maxime Bernier: I support that.

The Chair: All those in favour?

(Motion agreed to)

The Chair: Excellent. I just need confirmation, so tell me if you're coming. If not, then we'll find other people who will have an interest in being there.

Thank you very much.

We are adjourned.

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